IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10531 of 1996

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHTRATHBHAI CHANDULAL THAKKER

Versus

STATE OF GUJARAT

Appearance:

MR KB PUJARA for Petitioner No. 1

MR KL PANDYA, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/04/2004

ORAL JUDGEMENT

1. The petitioner has challenged the order of the State Government dated 13th November 1996 whereby the order of confiscation of the goods worth Rs.20000/- and the order of forfeiture of deposit were confirmed.

2. On 23rd November 1994 the officers of the

respondent no.3 inspected the business premises of the petitioner and during the inspection alleged certain procedural irregularities. They, therefore, seized 46.75 quintal Raida and 768 kgs Raida oil of total worth of Rs.77,169.75 and issued seizure order. Thereafter on furnishing bank guarantee, the goods were released on 6th December 1994.

3. The respondent no.2 issued a show-casue notice dated 21.12.1994 to the petitioner, to which the petitioner has submitted his reply on 6th January 1995. Thereafter the respondent no.2 passed an order dated 7.7.1995/25.7.1995 confiscating the entire quantity of the goods seized from the petitioner. The petitioner therefore preferred Appeal No.461/1995 before the State Government. The said appeal was partly allowed by order dated 13th November 1996 whereby the order of confiscation was modified and the amount of Rs.77,179.75 was reduced to Rs.20000/-. In the present petition the petitioner has challenged the said order in so far as the appeal of the petitioner was dismissed by the respondent no.1.

4. Pursuant to the aforesaid inspection, another show-cause notice was issued to the petitioner on 21st December 1994 to show-cause as to why the amount of deposit towards licence should not be forfeited. The petitioner has submitted his reply and thereafter the respondent no.3 passed an order for forfeiture of the deposit. Against the said order the petitioner preferred an appeal before the Collector, who dismissed the same by his order dated 20th January 1996. The order of Collector was challenged by way of Revision Application No.13/96 before the State Government, which also came to be rejected by order dated 13th November 1996. The said order has also been challenged in the present petition.

5. Heard the learned counsel for the respective parties and perused the relevant documents on record.

6. Mr. Pujara for the petitioner submitted that for the very same allegations two different show-cause notices were issued - one under the provisions of Essential Commodities Act, 1955 and the other under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981. He further submitted that both the notices are of the same date and the contents are same and verbatim and the allegations made in the said notices are also one and the same. Mr.Pujara, therefore, contended that the respondent authority ought not to have issued two different show

cause notices proposing two different penalties for the very same allegations. According to him, for the same alleged wrong, there cannot be two different penalties. Mr. Pujara has also raised a contention that the appellate authority has issued the notice and therefore appeal against the order of the District Supply Officer has been denied since the higher authority has issued the notice and has decided the issue before the appeal was filed.

7. The second contention raised by Mr. Pujara is that the alleged breaches are of technical nature which do not warrant any order for confiscation in view of the language of section 6-A of the said Act, more particularly when the revisional authority has itself reduced the penalty from 100% to 20%. Mr. Pujara has relied upon a decision of the Supreme Court in the case of N. Nagendra Rao & Co. Vs. State of A.P., reported AIR 1994 SC 2663. Para 5 of the said decision reads as under:

"5. Prior to adjudicating upon the legal issues, it appears appropriate to examine in brief the objective of the Act, the provisions dealing with search, seizure and confiscation and the nature of their powers and manner of its exercise as it shall assist in determining if the statutory authorities are responsible for any loss or damage to the stocks and, if so, to what extent. The act was enacted in 1955 in the interest of the general public for the control of the production, supply and distribution of essential commodities and trade and commerce. In M/s Diwan Sugar & General Mills (Pvt.) Ltd. Vs. Union of India, AIR 1959 SC 626 : 1959(2) SCR 123, it was held that the prime object of the legislation was to secure availability of essential commodities to the general public at fair prices and to protect their interest by way of equitable distribution. "Essential Commodity" under Cl.(a) of S.2 of the Act means any of the commodities mentioned therein. It extends to such varied items as cattle fodder, coal, component parts and accessories of automobiles, cotton and woolen textiles, foodstuffs, iron and steel, paper, petroleum, raw cotton, jute and any other class of commodity notified by the appropriate Government. S.3 is the main provision directed towards securing equitable distribution of the essential commodity and its availability at fair prices. To achieve this objective, its various

sub-sections confer powers on Government to issue orders regulating or even prohibiting production, supply and distribution of such goods. Cl.(j) of sub-sec.(2) of S. 3 empowers the Government to make any provision for any incidental or supplementary matter including in particular, the entry, search or examination of such premises, aircraft, vessels, vehicles, etc. to make seizure by a person authorised to make such entry, search or examination. But the power in respect of the articles has been made subject to reasonable belief that a contravention of the order has been, is being, or about to be committed. The breach of the sub-section is very wide as it empowers the person authorised to seize even if any contravention is about to be committed. The expression "reason to believe" has been interpreted by this Court to mean that even though formation of opinion may be subjective but it must be based on material on the record. It cannot be arbitrary, capricious or whimsical. It is, thus, a check on exercise of power to seize the goods. The procedure after seizure is provided for by S.6A of the Act. Sub-se.(1) of it is extracted below:

"6A. Confiscation of essential commodity - (1) Where any essential commodity is seized in pursuance of an order made under S.3 in relation thereto, a report of such seizure shall, without unreasonable delay, be made to the Collector of the district or the Presidency Town in which such essential commodity is seized and whether or not a prosecution is instituted for the contravention of such order, the Collector may, if he thinks it expedient so to do, direct the essential commodity so seized to be produced for inspection before him, and if he is satisfied that there has been a contravention of the order may order confiscation of -

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found, and

(c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity;

It requires a report of seizure of the essential commodity to be made without unreasonable delay to the Collector of the district who is empowered to direct confiscation if he is satisfied that there has been a contravention of the order. This requirement is to ensure that the higher authority shall apply its mind and take necessary steps in accordance with law. For instance, in this case, even non-essential goods were seized. If the Collector would have applied its mind and perused the report he would have immediately directed release of such goods instead of directing its sale by Tehsildar as the provision of the Act and the Control Orders do not apply to non-essential goods. The exercise of power was obviously mechanical. This is being mentioned only to demonstrate the nature of power and how it is expected to be exercised. Nothing turns on it so far as this appeal is concerned. But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found or is conveyed or carried, but is liable to be prosecuted and penalised under S.7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word "may". A trader indulging in black-marketing or selling adulterated goods, etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list, etc., or even discrepancies in stock."

8. As against the aforesaid contention, Mr. KL Pandya, learned AGP has defended the order of the District Supply Officer, the Collector and the Revisional Authority and submitted that the authorities have followed the procedure and the order was passed after considering the reply filed by the petitioner. He submitted that the revisional authority has reduced the

order of confiscation from 100% to 20% which does not call for any interference.

9. I have considered the submissions of both the sides and also perused the impugned orders. Looking to the nature of allegations made against the petitioner and the findings of the revisional authority, I find substance in the contention of Mr. Pujara for the petitioner that the alleged breaches committed by the petitioner are of technical nature. Since the said contention is acceptable, I am not entering into the larger issue regarding the legality and validity of issuance of two different show-cause notices by the authority for the very same allegation.

10. From the perusal of the notices issued by both the authorities at pages 22 and 37 it is clear that the allegations levelled in both the notices are one and the same and in verbatim. Even the allegation with regard to breach of conditions referred to in both the notices are the same. Admittedly the allegations are of procedural lapses and there is no finding that the intention of the petitioner was to misuse the licence or the petitioner has committed any illegality or malpractice. It is for this very reason that the revisional authority has reduced the penalty to 20%. When the revisional authority has prima facie accepted the case of the petitioner, it was not necessary to impose any penalty upon the petitioner. In view of the observation of this Court in the case of Patel Ambaram Kuberbhai, reported in 1998(2) GLH 533, what is required to be seen is whether the petitioner has committed any malpractice or indulged into black marketing so as to call for order of confiscation. It is not the case of the authority that the petitioner has indulged into black-marketing or selling adulterated goods. In absence of such allegations, the order of confiscation should have been quashed by the revisional authority. Apart from that, while passing the order the Collector has not given any finding which is required to be given that the allegations are proved which call for order of confiscation.

11. Mr. K.L. Pandya, learned AGP, could not contest the aforesaid contentions by pointing out any material justifying the order of confiscation of the goods in question as also the order for forfeiture of the deposit.

12. In the result, the petition is allowed. The impugned order dated 13.12.1996 of the revisional

authority ordering confiscation of goods worth Rs.20000/ and the order passed in Revision Application No.13/96 dated 13.11.1996 ordering forfeiture of the deposit are quashed and set aside. The bank guarantee furnished by the petitioner shall be released forthwith. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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